

1. (Amended) An apparatus to create musical noise comprising:

a shaker having an inner surface defining a central cavity where a plurality of impact particles are contained therein, a central base portion having a lower surface and an upper surface

a frame member having a first base support surface and a second support surface

a first spring member having a lower portion and an upper portion where the lower portion is supported by said first base support surface of the said frame member,

a drive rod having a lower portion, a central portion and an upper portion, and comprising a lower stop member positioned below the second support surface of the frame member, the drive rod further comprising:

an intermediate stop member having a lower surface and an upper surface;

an upper stop member having a lower stop surface

a second spring interposed between the upper surface of the intermediate stop member and the lower surface of the central base portion of the shaker so that the second spring is adapted to apply a vertical force to the shaker;

whereby, the central base portion of the shaker is slidably connected to the said drive rod and is interposed between the second spring member and the lower stop surface of the upper stop member.

11. (Amended) The apparatus as recited in claim 1 where the shaker is torus shaped.

12. (Amended) The apparatus as recited in claim 1 where the frame member comprises a cylinder and the drive rod is adapted to extend therethrough.

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14. (Amended) The apparatus as recited in claim 1 where intermediate stop member comprises a nut member which is adapted to be threaded to the drive rod.

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15. (Amended) The apparatus as recited in claim 1 wherein, the lower stop surface of the stop member comprises a cushioning material.

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16. (Amended) A method of creating a musical noise comprising the steps of:

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providing a shaker having an inner surface defining a cavity containing a plurality of impact particles that are loosely positioned therein to create a rattling noise when impacting the said inner surface,

slidably positioning the said shaker on a first member between a stop member having an impact surface and a shaker spring having first and second engaging portions, where the first engaging portion of the shaker spring is operatively engaged to the first member and the second engaging portion engages the shaker,

displacing the first member in a manner that when the first member is displaced in a first direction, the impact surface of the stop member applies force to the shaker, thereby causing an acceleration of the shaker in the first direction,

decelerating the first member thereby causing the shaker to compress the shaker spring,

the shaker spring accelerates the shaker in a second direction,

the shaker impacts the impact surface of the stop member thereby decelerating the shaker traveling in the second direction.

whereby, the impact particles loosely positioned in the said cavity of the shaker are adapted to create a musical noise

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based upon the accelerations of the shaker in the said first and second direction.

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12 ¹¹18. (Amended) The method as recited in claim ¹¹17 where there is a sufficiently high rate of acceleration and/or deceleration of the shaker so that the impact particles become positioned above a resting position of the impact particles and hence as the impact particles fall on the lower portion of the inner surface of the shaker, a downward force is exerted thereon and the shaker spring has a compression force exerted thereon.

¹³19. (Amended) The method as recited in claim ¹²18 wherein said compression force causes an oscillating movement of the shaker.

¹⁶22. (Amended) The method as recited in claim ¹⁰16 wherein there is further provided a base spring which is operatively engaged to the first member and arranged so that when the first member travels in the said first direction the base spring compresses and the base spring exerts an accelerating force on the first member in the said second direction.

a5 ¹⁷23. (Amended) The method as recited in ¹⁶22 wherein there is a frame member which is stationary with respect to movement of the first member.

¹⁸24. (Amended) The method as recited in claim ¹⁰16, where the first and second directions are diametrically opposed to one another.

¹⁹25. (Amended) The method as recited in claim ¹⁰16, further comprising the steps of supplying a foot pedal connected to the said first member and depressing and releasing the foot pedal to cause movement of the first member.

²⁰26. (Amended) An apparatus to create musical noise comprising:

- a) a first member having a longitudinal axis with the first member being arranged to travel in a substantially reciprocating motion along the said longitudinal axis the first member comprising:

- As cond.
- i) a first stop location engaging a first portion of a shaker spring and the shaker spring having a second portion at a second location spaced from the first portion,
 - ii) a second stop location located on the first member at a distance from the first stop location,

- b) a shaker having an inner surface defining a cavity that is adapted to hold a plurality of impact particles,
- c) the shaker being arranged to be moved in the direction of the longitudinal axis and at least a portion of the shaker being arranged to move between the second stop location and the second portion of the said shaker spring.

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27. (Amended) The apparatus as recited in claim ²⁰26 wherein the shaker is positioned on the first member to move into and out of contact with an impact surface of the second stop location.

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28. (Amended) The apparatus as recited in claim ²¹27 wherein the shaker is arranged to have a rest position where at least a portion of the shaker is in contact with the said impact surface of the second stop location and the said shaker spring is arranged to bias the shaker toward the impact surface.

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29. (Amended) The apparatus as recited in claim ²²28 wherein there is a base spring which is operatively engaged to the first member to urge the first member in the second direction.

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30. (Amended) The apparatus as recited in claim ²³29 wherein the apparatus is arranged so that when the shaker moves in the first direction by a force caused by the impact surface at the second stop location to cause an acceleration of the first member in the first direction, the base spring is compressed to provide a restraining force.

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~~37~~ (Amended) The apparatus as recited in claim ~~26~~ where the longitudinal axis has a first direction and a second direction, and the impact surface of the second stop location is arranged to bias the shaker toward said first direction and there is a base spring arranged to bias the shaker toward the second direction.

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a7 ~~38~~ (Amended) The apparatus as recited in claim ~~37~~ further comprising a frame member having a first portion of the base spring operatively engaged thereto and a second portion of the base spring is operatively engaged to the said first member to bias the said first member toward said second direction.

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~~40~~ (Amended) The apparatus in claim ~~38~~ wherein the first stop location is arranged to engage an impact surface of the frame member whereby there is a decelerating of the first member when the first member is completing travel in the said first direction.

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a8 ~~41~~ (Amended) The apparatus as recited in ~~40~~ where the frame member further comprises a foot pedal connected thereto that is arranged to displace the first member in the first direction.

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~~42~~ (Amended) The apparatus as recited in claim ~~41~~ whereas said frame member is oriented so that the first direction is substantially vertically downward.

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~~43~~ (Amended) The apparatus as recited in claim ~~42~~ wherein the frame member is arranged so that the second direction is substantially vertically upward.

REMARKS

Claims 4, 9, 12, 13, 17, 20, 21, and 39 remain in this application as originally submitted. Claim 2, 3, 5-8, 29 and 32-36 have been canceled. Claims 1, 10, 11, 14, 15, 16, 18, 19, 22-28, 30, 31, 37, 38, and 40-43 have been amended.